

By: Senator(s) Canon, Hewes, Bryan, Dearing, Walls

To: Fees, Salaries and Administration

SENATE BILL NO. 2751

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 REQUIRE AGENCIES AND GOVERNING AUTHORITIES TO BID CONTRACTS FOR  
3 CERTAIN FORMS OF INSURANCE; AND FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 SECTION 1. Section 31-7-13, Mississippi Code of 1972, is  
6 amended as follows:

7 31-7-13. All agencies and governing authorities shall  
8 purchase their commodities and printing; contracts for fire  
9 insurance, automobile insurance, casualty insurance (other than  
10 workers' compensation insurance), and liability insurance;  
11 contract for garbage collection or disposal; contract for solid  
12 waste collection or disposal; contract for sewage collection or  
13 disposal; contract for public construction; and contract for  
14 rentals as herein provided.

15 (a) **Bidding procedure for purchases not over \$1,500.00.**  
16 Purchases which do not involve an expenditure of more than One  
17 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or  
18 shipping charges, may be made without advertising or otherwise  
19 requesting competitive bids. Provided, however, that nothing  
20 contained in this paragraph (a) shall be construed to prohibit any  
21 agency or governing authority from establishing procedures which  
22 require competitive bids on purchases of One Thousand Five Hundred  
23 Dollars (\$1,500.00) or less.

24 (b) **Bidding procedure for purchases over \$1,500.00 but**  
25 **not over \$10,000.00.** Purchases which involve an expenditure of  
26 more than One Thousand Five Hundred Dollars (\$1,500.00) but not  
27 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight

28 and shipping charges may be made from the lowest and best bidder  
29 without publishing or posting advertisement for bids, provided at  
30 least two (2) competitive written bids have been obtained. Any  
31 governing authority purchasing commodities pursuant to this  
32 paragraph (b) may authorize its purchasing agent, or his designee,  
33 with regard to governing authorities other than counties, or its  
34 purchase clerk, or his designee, with regard to counties, to  
35 accept the lowest and best competitive written bid. Such  
36 authorization shall be made in writing by the governing authority  
37 and shall be maintained on file in the primary office of the  
38 agency and recorded in the official minutes of the governing  
39 authority, as appropriate. The purchasing agent or the purchase  
40 clerk, or their designee, as the case may be, and not the  
41 governing authority, shall be liable for any penalties and/or  
42 damages as may be imposed by law for any act or omission of the  
43 purchasing agent or purchase clerk, or their designee,  
44 constituting a violation of law in accepting any bid without  
45 approval by the governing authority. The term "competitive  
46 written bid" shall mean a bid submitted on a bid form furnished by  
47 the buying agency or governing authority and signed by authorized  
48 personnel representing the vendor, or a bid submitted on a  
49 vendor's letterhead or identifiable bid form and signed by  
50 authorized personnel representing the vendor. Bids may be  
51 submitted by facsimile, electronic mail or other generally  
52 accepted method of information distribution. Bids submitted by  
53 electronic transmission shall not require the signature of the  
54 vendor's representative unless required by agencies or governing  
55 authorities.

56 (c) **Bidding procedure for purchases over \$10,000.00.**

57 (i) **Publication requirement.** Purchases which  
58 involve an expenditure of more than Ten Thousand Dollars  
59 (\$10,000.00), exclusive of freight and shipping charges may be  
60 made from the lowest and best bidder after advertising for

61 competitive sealed bids once each week for two (2) consecutive  
62 weeks in a regular newspaper published in the county or  
63 municipality in which such agency or governing authority is  
64 located. The date as published for the bid opening shall not be  
65 less than seven (7) working days after the last published notice;  
66 however, if the purchase involves a construction project in which  
67 the estimated cost is in excess of Fifteen Thousand Dollars  
68 (\$15,000.00), such bids shall not be opened in less than fifteen  
69 (15) working days after the last notice is published and the  
70 notice for the purchase of such construction shall be published  
71 once each week for two (2) consecutive weeks. The notice of  
72 intention to let contracts or purchase equipment shall state the  
73 time and place at which bids shall be received, list the contracts  
74 to be made or types of equipment or supplies to be purchased, and,  
75 if all plans and/or specifications are not published, refer to the  
76 plans and/or specifications on file. If there is no newspaper  
77 published in the county or municipality, then such notice shall be  
78 given by posting same at the courthouse, or for municipalities at  
79 the city hall, and at two (2) other public places in the county or  
80 municipality, and also by publication once each week for two (2)  
81 consecutive weeks in some newspaper having a general circulation  
82 in the county or municipality in the above provided manner. On  
83 the same date that the notice is submitted to the newspaper for  
84 publication, the agency or governing authority involved shall mail  
85 written notice to, or provide electronic notification to the main  
86 office of the Mississippi Contract Procurement Center that  
87 contains the same information as that in the published notice.

88 (ii) **Bidding process amendment procedure.** If all  
89 plans and/or specifications are published in the notification,  
90 then the plans and/or specifications may not be amended. If all  
91 plans and/or specifications are not published in the notification,  
92 then amendments to the plans/specifications, bid opening date, bid  
93 opening time and place may be made, provided that the agency or

94 governing authority maintains a list of all prospective bidders  
95 who are known to have received a copy of the bid documents and all  
96 such prospective bidders are sent copies of all amendments. This  
97 notification of amendments may be made via mail, facsimile,  
98 electronic mail or other generally accepted method of information  
99 distribution. No addendum to bid specifications may be issued  
100 within forty-eight (48) working hours of the time established for  
101 the receipt of bids unless such addendum also amends the bid  
102 opening to a date not less than five (5) working days after the  
103 date of the addendum.

104                   (iii) **Filing requirement.** In all cases involving  
105 governing authorities, before the notice shall be published or  
106 posted, the plans or specifications for the construction or  
107 equipment being sought shall be filed with the clerk of the board  
108 of the governing authority. In addition to these requirements, a  
109 bid file shall be established which shall indicate those vendors  
110 to whom such solicitations and specifications were issued, and  
111 such file shall also contain such information as is pertinent to  
112 the bid.

113                   (iv) **Specification restrictions.** Specifications  
114 pertinent to such bidding shall be written so as not to exclude  
115 comparable equipment of domestic manufacture. Provided, however,  
116 that should valid justification be presented, the Department of  
117 Finance and Administration or the board of a governing authority  
118 may approve a request for specific equipment necessary to perform  
119 a specific job. Further, such justification, when placed on the  
120 minutes of the board of a governing authority, may serve as  
121 authority for that governing authority to write specifications to  
122 require a specific item of equipment needed to perform a specific  
123 job. In addition to these requirements, from and after July 1,  
124 1990, vendors of relocatable classrooms and the specifications for  
125 the purchase of such relocatable classrooms published by local  
126 school boards shall meet all pertinent regulations of the State

127 Board of Education, including prior approval of such bid by the  
128 State Department of Education.

129 (d) **Lowest and best bid decision procedure.**

130 (i) **Decision procedure.** Purchases may be made  
131 from the lowest and best bidder. In determining the lowest and  
132 best bid, freight and shipping charges shall be included.  
133 Life-cycle costing, total cost bids, warranties, guaranteed  
134 buy-back provisions and other relevant provisions may be included  
135 in the best bid calculation. All best bid procedures for state  
136 agencies must be in compliance with regulations established by the  
137 Department of Finance and Administration. If any governing  
138 authority accepts a bid other than the lowest bid actually  
139 submitted, it shall place on its minutes detailed calculations and  
140 narrative summary showing that the accepted bid was determined to  
141 be the lowest and best bid, including the dollar amount of the  
142 accepted bid and the dollar amount of the lowest bid. No agency  
143 or governing authority shall accept a bid based on items not  
144 included in the specifications.

145 (ii) **Construction project negotiations authority.**

146 If the lowest and best bid is not more than ten percent (10%)  
147 above the amount of funds allocated for a public construction or  
148 renovation project, then the agency or governing authority shall  
149 be permitted to negotiate with the lowest bidder in order to enter  
150 into a contract for an amount not to exceed the funds allocated.

151 (e) **Lease-purchase authorization.** For the purposes of  
152 this section, the term "equipment" shall mean equipment, furniture  
153 and, if applicable, associated software and other applicable  
154 direct costs associated with the acquisition. Any lease-purchase  
155 of equipment which an agency is not required to lease-purchase  
156 under the master lease-purchase program pursuant to Section  
157 31-7-10 and any lease-purchase of equipment which a governing  
158 authority elects to lease-purchase may be acquired by a  
159 lease-purchase agreement under this paragraph (e). Lease-purchase

160 financing may also be obtained from the vendor or from a  
161 third-party source after having solicited and obtained at least  
162 two (2) written competitive bids, as defined in paragraph (b) of  
163 this section, for such financing without advertising for such  
164 bids. Solicitation for the bids for financing may occur before or  
165 after acceptance of bids for the purchase of such equipment or,  
166 where no such bids for purchase are required, at any time before  
167 the purchase thereof. No such lease-purchase agreement shall be  
168 for an annual rate of interest which is greater than the overall  
169 maximum interest rate to maturity on general obligation  
170 indebtedness permitted under Section 75-17-101, and the term of  
171 such lease-purchase agreement shall not exceed the useful life of  
172 equipment covered thereby as determined according to the upper  
173 limit of the asset depreciation range (ADR) guidelines for the  
174 Class Life Asset Depreciation Range System established by the  
175 Internal Revenue Service pursuant to the United States Internal  
176 Revenue Code and regulations thereunder as in effect on December  
177 31, 1980, or comparable depreciation guidelines with respect to  
178 any equipment not covered by ADR guidelines. Any lease-purchase  
179 agreement entered into pursuant to this paragraph (e) may contain  
180 any of the terms and conditions which a master lease-purchase  
181 agreement may contain under the provisions of Section 31-7-10(5),  
182 and shall contain an annual allocation dependency clause  
183 substantially similar to that set forth in Section 31-7-10(8).  
184 Each agency or governing authority entering into a lease-purchase  
185 transaction pursuant to this paragraph (e) shall maintain with  
186 respect to each such lease-purchase transaction the same  
187 information as required to be maintained by the Department of  
188 Finance and Administration pursuant to Section 31-7-10(13).  
189 However, nothing contained in this section shall be construed to  
190 permit agencies to acquire items of equipment with a total  
191 acquisition cost in the aggregate of less than Ten Thousand  
192 Dollars (\$10,000.00) by a single lease-purchase transaction. All

193 equipment, and the purchase thereof by any lessor, acquired by  
194 lease-purchase under this paragraph and all lease-purchase  
195 payments with respect thereto shall be exempt from all Mississippi  
196 sales, use and ad valorem taxes. Interest paid on any  
197 lease-purchase agreement under this section shall be exempt from  
198 State of Mississippi income taxation.

199 (f) **Alternate bid authorization.** When necessary to  
200 ensure ready availability of commodities for public works and the  
201 timely completion of public projects, no more than two (2)  
202 alternate bids may be accepted by a governing authority for  
203 commodities. No purchases may be made through use of such  
204 alternate bids procedure unless the lowest and best bidder, for  
205 reasons beyond his control, cannot deliver the commodities  
206 contained in his bid. In that event, purchases of such  
207 commodities may be made from one (1) of the bidders whose bid was  
208 accepted as an alternate.

209 (g) **Construction contract change authorization.** In the  
210 event a determination is made by an agency or governing authority  
211 after a construction contract is let that changes or modifications  
212 to the original contract are necessary or would better serve the  
213 purpose of the agency or the governing authority, such agency or  
214 governing authority may, in its discretion, order such changes  
215 pertaining to the construction that are necessary under the  
216 circumstances without the necessity of further public bids;  
217 provided that such change shall be made in a commercially  
218 reasonable manner and shall not be made to circumvent the public  
219 purchasing statutes. In addition to any other authorized person,  
220 the architect or engineer hired by an agency or governing  
221 authority with respect to any public construction contract shall  
222 have the authority, when granted by an agency or governing  
223 authority, to authorize changes or modifications to the original  
224 contract without the necessity of prior approval of the agency or  
225 governing authority when any such change or modification is less

226 than one percent (1%) of the total contract amount. The agency or  
227 governing authority may limit the number, manner or frequency of  
228 such emergency changes or modifications.

229 (h) **Petroleum purchase alternative.** In addition to  
230 other methods of purchasing authorized in this chapter, when any  
231 agency or governing authority shall have a need for gas, diesel  
232 fuel, oils and/or other petroleum products in excess of the amount  
233 set forth in paragraph (a) of this section, such agency or  
234 governing authority may purchase the commodity after having  
235 solicited and obtained at least two (2) competitive written bids,  
236 as defined in paragraph (b) of this section. If two (2)  
237 competitive written bids are not obtained the entity shall comply  
238 with the procedures set forth in paragraph (c) of this section.  
239 In the event any agency or governing authority shall have  
240 advertised for bids for the purchase of gas, diesel fuel, oils and  
241 other petroleum products and coal and no acceptable bids can be  
242 obtained, such agency or governing authority is authorized and  
243 directed to enter into any negotiations necessary to secure the  
244 lowest and best contract available for the purchase of such  
245 commodities.

246 (i) **Road construction petroleum products price**  
247 **adjustment clause authorization.** Any agency or governing  
248 authority authorized to enter into contracts for the construction,  
249 maintenance, surfacing or repair of highways, roads or streets,  
250 may include in its bid proposal and contract documents a price  
251 adjustment clause with relation to the cost to the contractor,  
252 including taxes, based upon an industry-wide cost index, of  
253 petroleum products including asphalt used in the performance or  
254 execution of the contract or in the production or manufacture of  
255 materials for use in such performance. Such industry-wide index  
256 shall be established and published monthly by the Mississippi  
257 Department of Transportation with a copy thereof to be mailed,  
258 upon request, to the clerks of the governing authority of each



259 municipality and the clerks of each board of supervisors  
260 throughout the state. The price adjustment clause shall be based  
261 on the cost of such petroleum products only and shall not include  
262 any additional profit or overhead as part of the adjustment. The  
263 bid proposals or document contract shall contain the basis and  
264 methods of adjusting unit prices for the change in the cost of  
265 such petroleum products.

266           (j) **State agency emergency purchase procedure.** If the  
267 executive head of any agency of the state shall determine that an  
268 emergency exists in regard to the purchase of any commodities or  
269 repair contracts, so that the delay incident to giving opportunity  
270 for competitive bidding would be detrimental to the interests of  
271 the state, then the provisions herein for competitive bidding  
272 shall not apply and the head of such agency shall be authorized to  
273 make the purchase or repair. Total purchases so made shall only  
274 be for the purpose of meeting needs created by the emergency  
275 situation. In the event such executive head is responsible to an  
276 agency board, at the meeting next following the emergency  
277 purchase, documentation of the purchase, including a description  
278 of the commodity purchased, the purchase price thereof and the  
279 nature of the emergency shall be presented to the board and placed  
280 on the minutes of the board of such agency. The head of such  
281 agency shall, at the earliest possible date following such  
282 emergency purchase, file with the Department of Finance and  
283 Administration (i) a statement under oath certifying the  
284 conditions and circumstances of the emergency, and (ii) a  
285 certified copy of the appropriate minutes of the board of such  
286 agency, if applicable.

287           (k) **Governing authority emergency purchase procedure.**  
288 If the governing authority, or the governing authority acting  
289 through its designee, shall determine that an emergency exists in  
290 regard to the purchase of any commodities or repair contracts, so  
291 that the delay incident to giving opportunity for competitive

292 bidding would be detrimental to the interest of the governing  
293 authority, then the provisions herein for competitive bidding  
294 shall not apply and any officer or agent of such governing  
295 authority having general or special authority therefor in making  
296 such purchase or repair shall approve the bill presented therefor,  
297 and he shall certify in writing thereon from whom such purchase  
298 was made, or with whom such a repair contract was made. At the  
299 board meeting next following the emergency purchase or repair  
300 contract, documentation of the purchase or repair contract,  
301 including a description of the commodity purchased, the price  
302 thereof and the nature of the emergency shall be presented to the  
303 board and shall be placed on the minutes of the board of such  
304 governing authority.

305           (1) **Hospital purchase or lease authorization.** The  
306 commissioners or board of trustees of any hospital owned or owned  
307 and operated separately or jointly by one or more counties,  
308 cities, towns, supervisors districts or election districts, or  
309 combinations thereof, may contract with such lowest and best  
310 bidder for the purchase or lease of any commodity under a contract  
311 of purchase or lease-purchase agreement whose obligatory terms do  
312 not exceed five (5) years. In addition to the authority granted  
313 herein, the commissioners or board of trustees are authorized to  
314 enter into contracts for the lease of equipment or services, or  
315 both, which it considers necessary for the proper care of patients  
316 if, in its opinion, it is not financially feasible to purchase the  
317 necessary equipment or services. Any such contract for the lease  
318 of equipment or services executed by the commissioners or board  
319 shall not exceed a maximum of five (5) years' duration and shall  
320 include a cancellation clause based on unavailability of funds.  
321 If such cancellation clause is exercised, there shall be no  
322 further liability on the part of the lessee.

323           (m) **Exceptions from bidding requirements.** Excepted  
324 from bid requirements are:

325 (i) **Purchasing agreements approved by department.**

326 Purchasing agreements, contracts and maximum price regulations  
327 executed or approved by the Department of Finance and  
328 Administration.

329 (ii) **Outside equipment repairs.** Repairs to  
330 equipment, when such repairs are made by repair facilities in the  
331 private sector; however, engines, transmissions, rear axles and/or  
332 other such components shall not be included in this exemption when  
333 replaced as a complete unit instead of being repaired and the need  
334 for such total component replacement is known before disassembly  
335 of the component; provided, however, that invoices identifying the  
336 equipment, specific repairs made, parts identified by number and  
337 name, supplies used in such repairs, and the number of hours of  
338 labor and costs therefor shall be required for the payment for  
339 such repairs.

340 (iii) **In-house equipment repairs.** Purchases of  
341 parts for repairs to equipment, when such repairs are made by  
342 personnel of the agency or governing authority; however, entire  
343 assemblies, such as engines or transmissions, shall not be  
344 included in this exemption when the entire assembly is being  
345 replaced instead of being repaired.

346 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
347 of gravel or fill dirt which are to be removed and transported by  
348 the purchaser.

349 (v) **Governmental equipment auctions.** Motor  
350 vehicles or other equipment purchased from a federal or state  
351 agency or a governing authority at a public auction held for the  
352 purpose of disposing of such vehicles or other equipment. Any  
353 purchase by a governing authority under the exemption authorized  
354 by this subparagraph (v) shall require advance authorization  
355 spread upon the minutes of the governing authority to include the  
356 listing of the item or items authorized to be purchased and the  
357 maximum bid authorized to be paid for each item or items.

358                   (vi)   **Intergovernmental sales and transfers.**  
359 Purchases, sales, transfers or trades by governing authorities or  
360 state agencies when such purchases, sales, transfers or trades are  
361 made by a private treaty agreement or through means of  
362 negotiation, from any federal agency or authority, another  
363 governing authority or state agency of the State of Mississippi,  
364 or any state agency of another state. Nothing in this section  
365 shall permit such purchases through public auction except as  
366 provided for in subparagraph (v) of this section. It is the  
367 intent of this section to allow governmental entities to dispose  
368 of and/or purchase commodities from other governmental entities at  
369 a price that is agreed to by both parties. This shall allow for  
370 purchases and/or sales at prices which may be determined to be  
371 below the market value if the selling entity determines that the  
372 sale at below market value is in the best interest of the  
373 taxpayers of the state. Governing authorities shall place the  
374 terms of the agreement and any justification on the minutes, and  
375 state agencies shall obtain approval from the Department of  
376 Finance and Administration, prior to releasing or taking  
377 possession of the commodities.

378                   (vii)   **Perishable supplies or food.** Perishable  
379 supplies or foods purchased for use in connection with hospitals,  
380 the school lunch programs, homemaking programs and for the feeding  
381 of county or municipal prisoners.

382                   (viii)   **Single source items.** Noncompetitive items  
383 available from one (1) source only. In connection with the  
384 purchase of noncompetitive items only available from one (1)  
385 source, a certification of the conditions and circumstances  
386 requiring the purchase shall be filed by the agency with the  
387 Department of Finance and Administration and by the governing  
388 authority with the board of the governing authority. Upon receipt  
389 of that certification the Department of Finance and Administration  
390 or the board of the governing authority, as the case may be, may,

391 in writing, authorize the purchase, which authority shall be noted  
392 on the minutes of the body at the next regular meeting thereafter.  
393 In those situations, a governing authority is not required to  
394 obtain the approval of the Department of Finance and  
395 Administration.

396 (ix) **Waste disposal facility construction**  
397 **contracts.** Construction of incinerators and other facilities for  
398 disposal of solid wastes in which products either generated  
399 therein, such as steam, or recovered therefrom, such as materials  
400 for recycling, are to be sold or otherwise disposed of; provided,  
401 however, in constructing such facilities a governing authority or  
402 agency shall publicly issue requests for proposals, advertised for  
403 in the same manner as provided herein for seeking bids for public  
404 construction projects, concerning the design, construction,  
405 ownership, operation and/or maintenance of such facilities,  
406 wherein such requests for proposals when issued shall contain  
407 terms and conditions relating to price, financial responsibility,  
408 technology, environmental compatibility, legal responsibilities  
409 and such other matters as are determined by the governing  
410 authority or agency to be appropriate for inclusion; and after  
411 responses to the request for proposals have been duly received,  
412 the governing authority or agency may select the most qualified  
413 proposal or proposals on the basis of price, technology and other  
414 relevant factors and from such proposals, but not limited to the  
415 terms thereof, negotiate and enter contracts with one or more of  
416 the persons or firms submitting proposals.

417 (x) **Hospital group purchase contracts.** Supplies,  
418 commodities and equipment purchased by hospitals through group  
419 purchase programs pursuant to Section 31-7-38.

420 (xi) **Information technology products.** Purchases  
421 of information technology products made by governing authorities  
422 under the provisions of purchase schedules, or contracts executed  
423 or approved by the Mississippi Department of Information

424 Technology Services and designated for use by governing  
425 authorities.

426                   (xii) **Energy efficiency services and equipment.**  
427 Energy efficiency services and equipment acquired by school  
428 districts, community and junior colleges, institutions of higher  
429 learning and state agencies or other applicable governmental  
430 entities on a shared-savings, lease or lease-purchase basis  
431 pursuant to Section 31-7-14.

432                   (xiii) **Municipal electrical utility system fuel.**  
433 Purchases of coal and/or natural gas by municipally-owned electric  
434 power generating systems that have the capacity to use both coal  
435 and natural gas for the generation of electric power.

436                   (xiv) **Library books and other reference materials.**  
437 Purchases by libraries or for libraries of books and periodicals;  
438 processed film, video cassette tapes, filmstrips and slides;  
439 recorded audio tapes, cassettes and diskettes; and any such items  
440 as would be used for teaching, research or other information  
441 distribution; however, equipment such as projectors, recorders,  
442 audio or video equipment, and monitor televisions are not exempt  
443 under this subparagraph.

444                   (xv) **Unmarked vehicles.** Purchases of unmarked  
445 vehicles when such purchases are made in accordance with  
446 purchasing regulations adopted by the Department of Finance and  
447 Administration pursuant to Section 31-7-9(2).

448                   (xvi) **Election ballots.** Purchases of ballots  
449 printed pursuant to Section 23-15-351.

450                   (xvii) **Multichannel interactive video systems.**  
451 From and after July 1, 1990, contracts by Mississippi Authority  
452 for Educational Television with any private educational  
453 institution or private nonprofit organization whose purposes are  
454 educational in regard to the construction, purchase, lease or  
455 lease-purchase of facilities and equipment and the employment of

456 personnel for providing multichannel interactive video systems  
457 (ITSF) in the school districts of this state.

458 (xviii) **Purchases of prison industry products.**

459 From and after January 1, 1991, purchases made by state agencies  
460 or governing authorities involving any item that is manufactured,  
461 processed, grown or produced from the state's prison industries.

462 (xix) **Undercover operations equipment.** Purchases  
463 of surveillance equipment or any other high-tech equipment to be  
464 used by law enforcement agents in undercover operations, provided  
465 that any such purchase shall be in compliance with regulations  
466 established by the Department of Finance and Administration.

467 (xx) **Junior college books for rent.** Purchases by  
468 community or junior colleges of textbooks which are obtained for  
469 the purpose of renting such books to students as part of a book  
470 service system.

471 (xxi) **Certain school district purchases.**

472 Purchases of commodities made by school districts from vendors  
473 with which any levying authority of the school district, as  
474 defined in Section 37-57-1, has contracted through competitive  
475 bidding procedures for purchases of the same commodities.

476 (xxii) **Garbage, solid waste and sewage contracts.**

477 Contracts for garbage collection or disposal, contracts for solid  
478 waste collection or disposal and contracts for sewage collection  
479 or disposal.

480 (xxiii) **Municipal water tank maintenance**

481 **contracts.** Professional maintenance program contracts for the  
482 repair or maintenance of municipal water tanks, which provide  
483 professional services needed to maintain municipal water storage  
484 tanks for a fixed annual fee for a duration of two (2) or more  
485 years.

486 (xxiv) **Purchases of Mississippi Industries for the**

487 **Blind products.** Purchases made by state agencies or governing

488 authorities involving any item that is manufactured, processed or  
489 produced by the Mississippi Industries for the Blind.

490 (xxv) **Purchases of state-adopted textbooks.**

491 Purchases of state-adopted textbooks by public school districts.

492 (xxvi) **Certain purchases under the Mississippi**

493 **Major Economic Impact Act.** Contracts entered into pursuant to the  
494 provisions of Section 57-75-9(2) and (3).

495 (n) **Term contract authorization.** All contracts for the  
496 purchase of:

497 (i) All contracts for the purchase of commodities,  
498 equipment and public construction (including, but not limited to,  
499 repair and maintenance), may be let for periods of not more than  
500 sixty (60) months in advance, subject to applicable statutory  
501 provisions prohibiting the letting of contracts during specified  
502 periods near the end of terms of office. Term contracts for a  
503 period exceeding twenty-four (24) months shall also be subject to  
504 ratification or cancellation by governing authority boards taking  
505 office subsequent to the governing authority board entering the  
506 contract.

507 (ii) Bid proposals and contracts may include price  
508 adjustment clauses with relation to the cost to the contractor  
509 based upon a nationally published industry-wide or nationally  
510 published and recognized cost index. The cost index used in a  
511 price adjustment clause shall be determined by the Department of  
512 Finance and Administration for the state agencies and by the  
513 governing board for governing authorities. The bid proposal and  
514 contract documents utilizing a price adjustment clause shall  
515 contain the basis and method of adjusting unit prices for the  
516 change in the cost of such commodities, equipment and public  
517 construction.

518 (o) **Purchase law violation prohibition and vendor**  
519 **penalty.** No contract or purchase as herein authorized shall be  
520 made for the purpose of circumventing the provisions of this



521 section requiring competitive bids, nor shall it be lawful for any  
522 person or concern to submit individual invoices for amounts within  
523 those authorized for a contract or purchase where the actual value  
524 of the contract or commodity purchased exceeds the authorized  
525 amount and the invoices therefor are split so as to appear to be  
526 authorized as purchases for which competitive bids are not  
527 required. Submission of such invoices shall constitute a  
528 misdemeanor punishable by a fine of not less than Five Hundred  
529 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
530 or by imprisonment for thirty (30) days in the county jail, or  
531 both such fine and imprisonment. In addition, the claim or claims  
532 submitted shall be forfeited.

533           (p) **Electrical utility petroleum-based equipment**  
534 **purchase procedure.** When in response to a proper advertisement  
535 therefor, no bid firm as to price is submitted to an electric  
536 utility for power transformers, distribution transformers, power  
537 breakers, reclosers or other articles containing a petroleum  
538 product, the electric utility may accept the lowest and best bid  
539 therefor although the price is not firm.

540           (q) **Fuel management system bidding procedure.** Any  
541 governing authority or agency of the state shall, before  
542 contracting for the services and products of a fuel management or  
543 fuel access system, enter into negotiations with not fewer than  
544 two (2) sellers of fuel management or fuel access systems for  
545 competitive written bids to provide the services and products for  
546 the systems. In the event that the governing authority or agency  
547 cannot locate two (2) sellers of such systems or cannot obtain  
548 bids from two (2) sellers of such systems, it shall show proof  
549 that it made a diligent, good-faith effort to locate and negotiate  
550 with two (2) sellers of such systems. Such proof shall include,  
551 but not be limited to, publications of a request for proposals and  
552 letters soliciting negotiations and bids. For purposes of this  
553 paragraph (q), a fuel management or fuel access system is an

554 automated system of acquiring fuel for vehicles as well as  
555 management reports detailing fuel use by vehicles and drivers, and  
556 the term "competitive written bid" shall have the meaning as  
557 defined in paragraph (b) of this section. Governing authorities  
558 and agencies shall be exempt from this process when contracting  
559 for the services and products of a fuel management or fuel access  
560 systems under the terms of a state contract established by the  
561 Office of Purchasing and Travel.

562           (r) **Solid waste contract proposal procedure.** Before  
563 entering into any contract for garbage collection or disposal,  
564 contract for solid waste collection or disposal or contract for  
565 sewage collection or disposal, which involves an expenditure of  
566 more than Fifty Thousand Dollars (\$50,000.00), a governing  
567 authority or agency shall issue publicly a request for proposals  
568 concerning the specifications for such services which shall be  
569 advertised for in the same manner as provided in this section for  
570 seeking bids for purchases which involve an expenditure of more  
571 than Ten Thousand Dollars (\$10,000.00). Any request for proposals  
572 when issued shall contain terms and conditions relating to price,  
573 financial responsibility, technology, legal responsibilities and  
574 other relevant factors as are determined by the governing  
575 authority or agency to be appropriate for inclusion; all factors  
576 determined relevant by the governing authority or agency or  
577 required by this paragraph (r) shall be duly included in the  
578 advertisement to elicit proposals. After responses to the request  
579 for proposals have been duly received, the governing authority or  
580 agency shall select the most qualified proposal or proposals on  
581 the basis of price, technology and other relevant factors and from  
582 such proposals, but not limited to the terms thereof, negotiate  
583 and enter contracts with one or more of the persons or firms  
584 submitting proposals. If the governing authority or agency deems  
585 none of the proposals to be qualified or otherwise acceptable, the  
586 request for proposals process may be reinitiated. Notwithstanding

587 any other provisions of this paragraph, where a county with at  
588 least thirty-five thousand (35,000) nor more than forty thousand  
589 (40,000) population, according to the 1990 federal decennial  
590 census, owns or operates a solid waste landfill, the governing  
591 authorities of any other county or municipality may contract with  
592 the governing authorities of the county owning or operating the  
593 landfill, pursuant to a resolution duly adopted and spread upon  
594 the minutes of each governing authority involved, for garbage or  
595 solid waste collection or disposal services through contract  
596 negotiations.

597           (s) **Minority set aside authorization.** Notwithstanding  
598 any provision of this section to the contrary, any agency or  
599 governing authority, by order placed on its minutes, may, in its  
600 discretion, set aside not more than twenty percent (20%) of its  
601 anticipated annual expenditures for the purchase of commodities  
602 from minority businesses; however, all such set-aside purchases  
603 shall comply with all purchasing regulations promulgated by the  
604 Department of Finance and Administration and shall be subject to  
605 bid requirements under this section. Set-aside purchases for  
606 which competitive bids are required shall be made from the lowest  
607 and best minority business bidder. For the purposes of this  
608 paragraph, the term "minority business" means a business which is  
609 owned by a majority of persons who are United States citizens or  
610 permanent resident aliens (as defined by the Immigration and  
611 Naturalization Service) of the United States, and who are Asian,  
612 Black, Hispanic or Native American, according to the following  
613 definitions:

614                   (i) "Asian" means persons having origins in any of  
615 the original people of the Far East, Southeast Asia, the Indian  
616 subcontinent, or the Pacific Islands.

617                   (ii) "Black" means persons having origins in any  
618 black racial group of Africa.

619 (iii) "Hispanic" means persons of Spanish or  
620 Portuguese culture with origins in Mexico, South or Central  
621 America, or the Caribbean Islands, regardless of race.

622 (iv) "Native American" means persons having  
623 origins in any of the original people of North America, including  
624 American Indians, Eskimos and Aleuts.

625 (t) **Construction punch list restriction.** The  
626 architect, engineer or other representative designated by the  
627 agency or governing authority that is contracting for public  
628 construction or renovation may prepare and submit to the  
629 contractor only one (1) preliminary punch list of items that do  
630 not meet the contract requirements at the time of substantial  
631 completion and one (1) final list immediately before final  
632 completion and final payment.

633 (u) **Purchase authorization clarification.** Nothing in  
634 this section shall be construed as authorizing any purchase not  
635 authorized by law.

636 SECTION 2. This act shall take effect and be in force from  
637 and after July 1, 2001.